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WALTER G. SMITH, EDITOR.

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FRIDAY JUNE 6

FITNESS AND AVAILABILITY.

It is one of the defects of popular government that the question of fitness in a candidate for office is not regarded so closely by nominating bodies as the question of availability. When a given man's name is mentioned for a high elective post the first interrogation is: "Can he carry this or that district?" The proper query would be: "Could he make a good showing in the office he seeks?" but this is not heard save among the fifties if not crabbier few who look upon politics not as an end, but as a means to an end. Everything centers on the carrying capacity of the individual, not upon his talent, his industry, his sense of honor, his eloquence, his skill or his strength in the handling of public questions.

It gives one a shock to find so universal an acceptance of this rule in the framing of legislative and Congressional tickets. Now if there is any business which calls for the trained and informed mind, the honest heart and the broad view, it is the business of framing laws. The science of government is no less a science than that of astronomy. Its sphere embraces law, philosophy, social ethics, history and constitutional forms; yet if the popular grocer or drover or man-about-town happens to want a seat in even our greatest deliberative public body, no one passes him to look for the thoroughly equipped citizen who has had too much use for his time to waste any of it in cultivating the good will of the voters. Of course it is inevitable, for the competent man cannot be elected. It would be useless to nominate him. But, as we say, the fact that we have to go on politically crowding square pegs into round holes, is a distinct reflection upon our form of government, placing it at a disadvantage with enlightened monarchies where the ruler makes it part of his business to find the strongest men for the highest posts and to confer no responsibility upon those who are not qualified to bear it.

JUDICIAL SPENDTHRIFT TRUST.

Though the Circuit judges have decided to sit one at a time, they seem disposed to employ the full staff of court officers provided for them when they were on the bench simultaneously. Between them they have three clerks, three stenographers, three bailiffs and two Hawaiian interpreters, a costly and cumbersome body. Though the public gets the benefit of but one court, the judges compel the taxpayers to support the paraphernalia of three courts, some of which paraphernalia, as common gossip says, is worse than useless.

It is lucky for the courts, under these circumstances, that they control the grand jury system. But for that, the spirit of public investigation which two of the judges have prompted, would soon be felt in the atmosphere of the circuit bench. The grand jury has usually, in its quests, found a false scent; but if it were to look into the Circuit court, summing up its extravagances and worse, there would develop a scandal worth ventilating.

What makes the judicial spendthrift trust the more unpardonable is that the times are hard, the treasury impoverished and taxes are oppressive.

CHECKING THE EXODUS.

The Hawaii Shiping Sha, which is doing good work against the coast agents who are trying to lure Japanese labor from these islands to California, has the following pungent editorial:

We are deadly against the wholesale migration of our laboring class to the mainland. We feel it is the invasion of a forbidden ground. It is like placing an obstacle against the wise course laid down by our home government in its immigration policy.

Secondly, we are against the proposition on their personal account, as we are by no means sure about their good prospects on the other side. On the contrary, we have grave doubt of their ever realizing the beautiful dream worked up successfully into their imaginations by the honied tongues of wily recruiting agents. As we repeatedly advised them, the secret of amassing money for them is not the amount they can earn, but to earn it steadily. California field does not offer such chance for them, if we are not misinformed.

Lastly, but not least, as a cause of our objection, we believe it is a bad faith and mean act on the part of laborers toward their patrons, the planters, thus to desert them in their need. This counsel is full of good points. The hint should not be lost on those interested that the diversion of our Japanese laborers to the mainland is a way of evading the compact about labor immigration which the United States, in good faith, entered into with Japan. If this fact is made proper use of, it may be the means of checking a movement which, as the Shiping Sha points out, can only lead to harm. Such a thing would be a favor to the laborers. Japanese are said that they can get big wages in California the year around when, as a matter of fact, they can command them only in the short season when fruit is being picked and dried. More than this, a glut of Japanese is wanted so that the high fruit season wage rate may be forced down.

If the Japanese wish to return home some day with well-lined purses, they had better stick to their present jobs. Pay is sure in Hawaii, food and shelter are provided for and the capital invested in sugar makes the planters better pay than the small fruit-growers of California, who work on a narrow margin and are more or less at the mercy, as respects their incomes, of the transportation lines.

W. D. Dressler, city editor of the San Francisco Examiner, is dead. He is remembered in Hawaii as one of the correspondents who came here when the American flag was hoisted in 1898. His death was the occasion of widespread sympathy in San Francisco and his funeral was attended by representatives of all departments of public and professional life at the coast metropolis.

SUPREME COURT'S OPINION.

The Supreme Court yesterday filed a decision in the case of Walter G. Smith, editor of The Advertiser, who was sentenced to thirty days imprisonment by the Circuit Court for contempt of court, in publishing a cartoon of Judge Gear. The case had been brought before the Supreme Court on habeas corpus proceedings, the main point being that the act committed was not in the presence of the court, so that if contempt had been committed at all, it was "constructive contempt," which by Hawaiian statute is not punishable. And consequently that the Circuit Court had no jurisdiction to sentence Mr. Smith.

The decision of a majority of the court, by Judges Frear and Galbraith, upholds the decision of the Circuit Court, while Judge Perry files a strong dissenting opinion.

Each of the Judges has written an opinion of his own. The decision of Judge Galbraith is that the contempt committed was a direct contempt. The decision of Judge Frear is somewhat obscure in its reasoning and meaning. As far as a brief study thereof indicates, he holds that under Hawaiian statute the Supreme Court cannot on habeas corpus proceedings, which are of a collateral nature, inquire into the merits of the case. He states, in effect, that if these proceedings had come before the Supreme Court on appeal or writ of error, as is allowed by the statutes of some of the states, but is not allowed under Hawaiian law, the result might have been different. As it is, he feels bound by the technicalities of the situation, and declines to go into the merits of the question, holding that the Circuit Court had jurisdiction.

Judge Perry holds, in a strongly reasoned and logical decision, that the publishing of the cartoon was not a direct contempt, and is, if anything, a "constructive contempt," which by Hawaiian statute is not punishable.

The difference between a "direct" and "constructive" contempt is that a direct contempt is one committed in the presence or immediate vicinity of the court. A constructive contempt is an act not committed in the presence of the court, such, for example, as newspaper articles commenting upon, or cartoons relating to the court.

The reasoning in Judge Galbraith's decision is, as we understand it, that any newspaper commenting upon the decision of a court in a manner distasteful to the Judge of that court, is liable to be punished for contempt, notwithstanding that there is an existing statute prohibiting the punishment of constructive contempt.

The decision of Judge Perry is a direct negative of the reasoning of Judge Galbraith and denies that the courts have any such power.

The decision of Judge Frear, while it in effect supports that of Judge Galbraith, does not go as far, and whether it supports to the full the theories advanced by Judge Galbraith are left an open question.

The attorneys for Mr. Smith, Messrs. W. O. Smith and A. Lewis, Jr., and Lorin Andrews, believe that a Federal question is involved, in that Congress, having ratified, among other statutes, the Hawaiian statute prohibiting the punishment of "constructive contempt," that statute is now as much a Federal statute as though it had been passed by Congress in the first instance. If this contention is correct it gives jurisdiction to the Federal courts to consider whether or not the act committed is, in effect, a direct or a constructive contempt. With a view to securing Federal adjudication on this point, the question will be immediately brought before United States District Judge Esteé, on a writ of habeas corpus.

SUPREME COURT DECIDES AGAINST WALTER G. SMITH

(Continued from Page 1.)

tempt, discredit and odium, did then and there and thereby commit a contempt of court." An order was thereupon issued citing Smith to appear at a time stated and show cause why he should not be adjudged guilty of contempt "in publishing, printing and circulating the said statement of and concerning the Presiding Judge of this court and the cartoon or picture with reference to a cause now pending and undetermined in this court, to-wit: the case of the Territory of Hawaii against William McCarthy, and which said statement and publication and picture or cartoon is well calculated to prejudice the minds of the jury sworn to try the issues and hinder, obstruct and prevent the court and jury in the discharge of their duties and the administration of public justice." The respondent appeared and filed a return and after certain other proceedings had been had, judgment was rendered and sentence pronounced.

In the view which I take of the case, it becomes material to consider whether the respondent in that proceeding was committed and sentenced for a constructive contempt or for a direct contempt.

As to the distinction between these two classes of contempts. "A direct contempt, or a contempt in facie curie, is noisy or tumultuous conduct in the presence of the court, or so near thereto as to interrupt its proceedings; or an open defiance of its powers or authority; or disrespectful behavior or language to the presiding Judge; or any improper conduct tending to defeat or impair the administration of justice. An indirect or constructive contempt is one offered elsewhere than in the presence of the court, and which tends by its operation to degrade or make impotent the authority of the court, or in some manner to impede or embarrass the due administration of justice."—7 Am. & Eng. Encycl. Law, 2nd Ed. 28.

"Contempts are defined to be direct, such as are offered in the presence of the court, while sitting judicially or constructively, such, though not in its presence, as tend to obstruct and embarrass or prevent the due administration of justice."—State v. Wilson, 64 Ill. 195. "The contempt is direct when committed before and in the presence of or so near to the court as to interrupt the proceedings of the court.

Contempts are constructive when they are committed not in the presence of the court, and when they tend by their operation to interrupt, obstruct, embarrass or prevent the due administration of justice."—Whitney v. State, 35 Ind. 185, 212, 213. "Contempts are generally divided by jurists into the classes of direct and constructive, direct being those committed in the presence of the court, and constructive being those acts which the court would have to construe by some process of reasoning to be equivalent to a direct contempt."—In re Bush, 8 Haw. 222. See also Church on Habeas Corpus, Sec. 306; Bradley v. State, 20 L. R. A. 652 (111 Ga. 169); Cooper v. People, 32 Pac. (Colo.) 791; State v. Kaiser, 20 Or. 57.

Assuming that the cartoon and words complained of are of the nature charged in the affidavit, i. e., insulting, contemptuous, contumelious, disrespectful and tending to obstruct and prevent the administration of justice, and that, as contended on behalf of the present respondent, they were of and concerning the case then pending and undetermined and not, as contended on behalf of the petitioner, of and concerning the case first tried and then concluded, and that the Circuit Court so found, and that such finding cannot be reviewed on habeas corpus, still, if the objectionable matter was published and circulated or caused to be published and circulated by Smith, or even, perhaps, by the proprietors of The Advertiser, only in the city generally and not in the court room or in adjoining portions of the court house, these acts would at most constitute a constructive contempt only. If, on the other hand, Smith or, let us say, the proprietors, published and circulated such matter, or caused it to be published and circulated, within the court room or in the adjoining portions of the court house, the contempt would be direct. Although there may be perhaps a few authorities to the contrary, this is supported by the great weight of authority. In Cooper v. People, supra, immediately after the language above quoted, the court said: "The acts here complained of belong to the latter class (constructive) if either. They consist of the publication in a newspaper, of general circulation in the place where the court was being held, of such articles in reference to a case pending as were calculated to interfere with the due administration of justice, as it is said."

"We have in this case, not a case of direct contempt, but a case of indirect constructive contempt, alleged to have been committed by the publication of these several articles in a daily newspaper, which are alleged to have been intended to and did prejudice the people against the court and grand jury, embarrass the administration of justice and reflect upon the court and its proceedings."—Fishback v. State, 131 Ind. 304, 312. "A newspaper corporation which deliberately seeks to influence judicial action by the publication of articles threatening the judges with public odium and reprobation in case they decide a pending cause in a particular way, is guilty of constructive contempt."—State v. Bee Publishing Co., 50 L. R. A. (Neb.) 195.

Ackermann vs. Congdon, 7 Haw. 31 (January, 1887), was a case of a publication in a newspaper of an article containing expressions which were deemed by the court to be "calculated to prejudice the tribunal which was to try defendant's case and render it unfavorable to him." The defendant's case referred to was pending. The publication was held to be a contempt, but that it was regarded as a contempt of the court, "as the case before us is the first instance of constructive contempt of this character brought to our notice, and as the case is not a serious one, we impose no fine." (p. 28.)

In Smith vs. Aholo, 7 Haw. 117 (April, 1887), the publication in a newspaper, was of an abstract of a bill in equity, and while the suit was pending. The court said: "We had occasion, at the January term, 1887, to decide in the case of the Hawaiian Gazette, ante, page 31, to say that such publications as appear to have a prejudicial effect upon the rights of the parties in cases pending in the courts, were punishable as constructive contempts of court." The publication in question comes within the principle laid down in the Gazette case, and is fully sustained by authority." See also, on this subject, State vs. Circuit Court, 72 N. W. (Wis.) 193, 195.

The case of Telegram Newspaper Co. vs. Commonwealth, 172 Mass. 294, cited for the respondent, does not hold to the contrary. It was immaterial in that case whether the contempt was direct or constructive, for the court was not limited by statute in the matter, but the court merely held that the publication amounts to a contempt of court, because it interferes with the due administration of justice in a cause before the court. The contempt is analogous to a contempt committed in the presence of the court. It also said, "The contempt, if there was one, was not, strictly speaking, committed in the presence of the court, but it related to a trial then before the court."

The mere fact that the petitioner, at the time that he published or caused to be published and circulated, generally, the newspaper containing the matter in question, knew, if he did, or must have known, that some subscriber or subscribers, to whom the paper would be delivered in due course, might bring copies of the paper to the court room and there circulate or publish them, would not, of itself, on any principle that I know of, render the petitioner criminally liable for such publication or circulation in the court room. There is, it is true, authority to the contrary. It is true that, upon such facts would be to hold him liable for the acts of others not aided, incited or encouraged by him. Such a case would not come within the rule as to responsibility for the natural and plainly probable consequences of one's acts.

Bearing in mind these definitions and distinctions, of what offense does the mittimus show the petitioner to have been adjudged guilty and for what offense does it show that sentence was imposed upon him? After reciting in full the motion for citation or affidavit the mittimus further recites that Smith was cited to answer "to the said charge of contempt which had been duly filed against him," and that upon due hearing of the evidence and of counsel "in support of the charge," and contra, "the Circuit Court found the said Walter G. Smith guilty of a contempt of this court as charged in the affidavit and motion." The affidavit and motion, as appears from the quotation above made, charged a constructive contempt only; it

was not charged that the petitioner, at the time that he published or caused to be published and circulated, generally, the newspaper containing the matter in question, knew, if he did, or must have known, that some subscriber or subscribers, to whom the paper would be delivered in due course, might bring copies of the paper to the court room and there circulate or publish them, would not, of itself, on any principle that I know of, render the petitioner criminally liable for such publication or circulation in the court room. There is, it is true, authority to the contrary. It is true that, upon such facts would be to hold him liable for the acts of others not aided, incited or encouraged by him. Such a case would not come within the rule as to responsibility for the natural and plainly probable consequences of one's acts.

A court martial has been in progress at Camp McKinley for several days, investigating the disappearance of about \$200 worth of quartermaster's stores. Several soldiers are under suspicion. The court is composed of Lieutenant Colonel Girard, Captain Williamson, Captain Pierce and Lieutenants Jones, Hehr and Robinson. The court will hold its concluding session Monday.

(Continued on Page 5.)

LOCAL BREVITIES.

(From Wednesday's Daily.)

There were 10 deaths during the month of May.

H. W. Robinson has been admitted to practice in the Federal Court.

Sheriff Brown has been notified of a murder on Kauai, but is given no particulars. The alleged murderer, who is a Japanese, has been placed under arrest.

The annual meeting of the Hawaiian Evangelical Association, which was to have been held in Lahaina this month, has been postponed to the second week in July.

Bruce Cartwright, as trustee for Emma Kalelelanani, has brought suit against the Territory to establish fishery rights at Kaneohe, Koolaukopo, on this island.

The Territorial band will leave on June 12 for Waimoe, Kauai, to be gone for 10 days. Sheriff Cony is arranging the program for the stay of the band on Kauai.

It is rumored that Deputy Attorney General Cathcart will resign, though the Attorney General has received no notification to that effect. Mr. Cathcart is now in Hilo.

Marshal Hendry has received a memorial framed in black, telling of the funeral of the late Marshal Daniel A. Ray. The services were held at Oak Hill Cemetery in Washington on May 16th.

This is the last week of the exhibition of pictures in the Kilohana Art League rooms. The display room is open every day from 9 to 5, and in the evening from 7 to 9. The attendance daily has been very fair.

Cards have been issued by Mrs. Sarah Grace announcing the marriage of her daughter Elizabeth to Mr. George Hubbard Angus, to take place at 8 o'clock on the evening of June 17 at Central Union church.

E. C. Rowe has brought suit against Stanley Stephenson for an accounting. Plaintiff claims that since the dissolution of partnership defendant has collected monies due the firm for which he has made no accounting.

Miss Pauline Neumann, Circuit Court stenographer for Judge Gear, has resigned. It is probable that no successor will be appointed, as the Legislature provided for but two court stenographers in the First Circuit.

Attorney Vivas yesterday presented to Governor Cooper the petition of South Kona residents asking the appointment of Thomas H. Wright as district magistrate. The term of Kaai, the present incumbent, expires in about two months.

The Honolulu Plantation Co. has filed a bill of exceptions with intention to appeal in the Pearl Harbor case. The United States has already given notice of appeal, and if the defendants also carry their case to the higher court, the result will be interesting.

(From Thursday's Daily.)

Miss H. James has been appointed stenographer in the Circuit Court to succeed Miss Pauline Neumann.

The hearing of the swipes sellers has been set for Friday afternoon before Commissioner Robinson. The bail in each case has been fixed at \$1000. Two of the defendants are women.

A meeting will be called of the St. Louis Exposition committee as soon as Acting Governor Cooper hears from the other islands. A meeting to select committees was scheduled to be held in Hilo yesterday.

Dr. and Mrs. John S. McGrew announce the marriage of their niece, Maude Mary Gillet, to Mr. Archibald Gillet, taken place at half past eight o'clock on the evening of June 18, 1902, at St. Andrew's cathedral.

While Mr. and Mrs. Charles Lucas were riding on Beretania street in a buggy, a Portuguese who was driving a surrey ran into their vehicle, taking off a hind wheel. The Portuguese was riding with another driver at the time of the accident. No one was hurt.

Ernest N. Smith of Honolulu was one of the four debaters chosen from the 600 students of the Brooklyn Polytechnic to meet a team from Pratt Institute in a public discussion of the Chinese question. The Polytechnic debaters won. The Brooklyn Times speaks of the telling effect of young Smith's speech, which was wholly extempore.

An iron gateway is being placed between the new and the old Hackfeld buildings, facing on Queen street. The two iron pillars are of a fine design, and the grill work overhead connecting them bears the name of the firm. Two bronze discs covering the locks and bolts give the gateway a fine finish. On one are the figures "49" and on the other "99."

Daniel Yowell, charged with manslaughter in the first degree, was committed for trial by Judge Dickey yesterday.

Taketa, a Japanese merchant in Palama, who was declared a bankrupt by Judge Esteé yesterday and W. T. Rawlins appointed as referee to hear the case.

R. Anderson and A. Garvie will fight out the final for the golf championship. This week Anderson defeated Donald Ross by 1 up and 2 to play. Garvie won from Norman Kay by default.

The Spanish-American War Veterans have secured the classroom in the Y. M. C. A. building. All members can have the use of the same at any time, during day or evening. Meeting notices will be posted in this room.

There will be an important business meeting of the Kamehameha Alumni Association this Friday evening, June 6, 1902, at 7:30 o'clock. Election of officers for the ensuing year. All members are requested to be present.

Tenders made for the construction of the approach to the Hackfeld wharf were opened yesterday. No contract was made, as all bids exceeded the appropriation set aside by the Department of Public Works for that purpose. Mrs. Emma Nakuna, Commissioner of Public Works and Water Rights for Honolulu, yesterday heard the suit brought by the Palolo Land and Improvement Company against property owners in the Palolo district to compel certain changes in ditches and dams on their lands.

Supt. Boyd frowns upon the proposition of the Board of Health to purchase the gasoline schooner Eclipse. He says that the appropriation of \$35,000 made by the legislature is for a "newly built steamer," and according to Mr. Boyd, the gasoline schooner does not come within the meaning of that act.

A court martial has been in progress at Camp McKinley for several days, investigating the disappearance of about \$200 worth of quartermaster's stores. Several soldiers are under suspicion. The court is composed of Lieutenant Colonel Girard, Captain Williamson, Captain Pierce and Lieutenants Jones, Hehr and Robinson. The court will hold its concluding session Monday.

Aching Joints

In the fingers, toes, arms, and other parts of the body, are joints that are inflamed and swollen by rheumatism—that acid condition of the blood which affects the muscles also.

Sufferers dread to move, especially after sitting or lying long, and their condition is commonly worse in wet weather.

"It has been a long time since we have been without Hood's Sarsaparilla. My father thinks he could not be without it. He has been troubled with rheumatism since he was a boy, and Hood's Sarsaparilla is the only medicine he can take that will enable him to take his place in the field." Miss Ada Dorr, Sidney, Iowa.

Hood's Sarsaparilla and Pills

Remove the cause of rheumatism—no outward application can. Take them.

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Capital of the Company and reserve, reichsmarks 6,000,000
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Capital their reinsurance companies 35,000,000
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The undersigned, general agents of the above two companies, for the Hawaiian Islands, are prepared to insure Buildings, Furniture, Merchandise and Produce, Machinery, etc.; also Sugar and Rice Mills, and Vessels in the harbor, against loss or damage by fire on the most favorable terms.

H. HACKFELD & CO., Limites

The undersigned, general agents of the above two companies, for the Hawaiian Islands, are prepared to insure Buildings, Furniture, Merchandise and Produce, Machinery, etc.; also Sugar and Rice Mills, and Vessels in the harbor, against loss or damage by fire on the most favorable terms.

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Hamburg-Bremen Fire Insurance Co.

The undersigned having been appointed agents of the above company are prepared to insure risks against fire on Stone and Brick Buildings and on Merchandise stored therein on the most favorable terms. For particulars apply at the office of
F. A. SCHAEFER & CO., AGTS.

German Lloyd Marine Insurance Co. OF BERLIN.

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The above Insurance Companies have established a general agency here, and the undersigned, general agents, are authorized to take risks against the dangers of the sea at the most reasonable rates and on the most favorable terms.
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Now is the Time to Plant SEEDS

A large shipment of fresh seeds has just been received.

It is not necessary to send to

the coast for garden or vegetable seeds when the same

may be had in a few days

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